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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,911	07/02/2002	Rudolf Wagner	22750/543	1244
26646	7590	01/05/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			TORRES VELAZQUEZ, NORCA LIZ	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No..

10/089,911

Applicant(s)

WAGNER ET AL.

Examiner

Norca L. Torres-Velazquez

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-16 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 04/04/02
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 5 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The terms “orange-like” and “nubuck-like” render the claims indefinite because they can encompass different configurations or materials.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-6, 8, 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over GROTEN et al (US 5,899,785) in view of FUJIWARA et al. (US 6,090,730).

GROTEN et al discloses a nonwoven lap of very fine continuous filaments, crimped or not, obtained by means of a controlled direct spinning process, with a weight between 5 g/m<sup>2</sup> and 600 g/m<sup>2</sup>, and formed of composite filaments with a filament number between 0.3 dTex and 10 dTex and are formed of at least three elementary filaments of at least two different materials. Each elementary filament has a filament number between 0.005 dTex and 2 dTex. (Abstract)

The reference teaches the use of their nonwoven lap as a textile for the fabrication of lining surfaces and the intermediate layers of shoe components. (Column 5, lines 16-17) The filaments

are spun, stretched (drawn), and subjected to prebonding by water prior to splitting (Columns 3-4, lines 55-12). The filaments are split by water jets (Column 4, lines 22-28). The reference teaches that the ratio of the cross-sectional area of each elementary filament to the total cross-sectional area of the unitary filament being between 0.5% and 90%. (Column 2, lines 22-24)

GROTEN et al. teaches applicant's claimed fiber configuration. (Refer to Figures 1-3)

GROTEN et al. further teaches emboss-calendering, thermofixation and thermosetting. (Column 4, lines 49-65) The reference also teaches that the structure of the nonwoven lap may also be consolidates by chemical treatment. (Column 4, lines 60-61) On Example 3, the reference teaches the impregnation of the lap with a solution of polyurethane. (Column 8, lines 30-31). The reference further teaches that the consolidation of the lap can be realized by hot calendering, prior to any separation of the unitary composite filaments into elementary filaments or microfilaments. (Column 4, lines 55-59)

GROTEN et al. also teaches that the use of polyester/polyamide materials. (Column 2, lines 62-65) In Example 1, the reference teaches the use of a higher polyester content of the multi-component filament than of polyamide. (Column 6, line 26) With regards to claim 11, it is noted that the reference teaches that the nonwoven lap of their invention can be used for the fabrication of lining surfaces and these are known to be attached to the interior of shoes by the application of hot-melt glue.

GROTEN et al teaches drawing the filaments, but fails to specify that these be drawn aerodynamically.

FUJIWARA et al. teaches a process of melt spinning continuous conjugate filaments (Abstract). Fujiwara teaches the filaments to be drawn using air suction. (Column 1, lines 15-20 and Column 9, lines 48-53).

Since both GROTEN et al. and FUJIWARA et al. are directed to nonwoven fabrics of conjugate filaments, the purpose disclosed by FUJIWARA et al. would have been recognized in the pertinent art of GROTEN et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to draw the fibers of GROTEN et al. with air. Such a modification would have been motivated by the desire to utilize a common, commercially available means of drawing that produces filaments having excellent hand, softness, and uniformity. (Column 3, lines 60-65).

5. Claims 4, 7, 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over GROTEN and FUJIWARA as applied to claims 1-3, 58, 12-13, 15 above, and further in view of AKZO (GB 2065732 A).

GROTEN fails to specify that the weight ratio of the polyester portion to the polyamide portion in the multi-component endless filaments is 1.1:1 to 3:1, and while it teaches the use of additives, it fails to teach the additives are in at least one of the incompatible polymers.

AKZO teaches a suede-like sheet-form material of multi-component fibers which have been treated with a polyurethane solution. The reference teaches multicomponent filaments of polyester/polyamide and teaches that in a favorable embodiment of their invention, the polyester component makes up from 70% to 90% of the cross-section of the unsplit fibers. (Page 1, lines 91-100) The reference also teaches that conventional additives, such as pigments, carbon black,

fire-retarding agents and delustering agents, may be added to the individual components. (Page 3, lines 83-86) The reference also teaches the use of smoothing as a finishing process. (Page 5, lines 92-95) It is the Examiner's interpretation that smoothing is analogous to the claimed polishing and buffing processes. With regards to claim 10, it is noted that nubuck is a type of suede. Therefore, it is presumed that the teachings of AKZO would encompass the nubuck configuration claimed herein.

Since AKZO is also directed to nonwoven fabrics of conjugate filaments, the purpose disclosed by AKZO would have been recognized in the art of GROTEN and FUJIWARA.

Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to utilize AKZO's ratio of polymer materials and additives in the filaments, and also to apply a smoothing process to the fabric with the motivation of providing an artificial leather product that combines high mechanical strength with suppleness as disclosed by ARZO. (Page 1, lines 111-119).

***Allowable Subject Matter***

6. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. The following is a statement of reasons for the indication of allowable subject matter: while the prior art of record teaches to impregnate the nonwoven fabric with a polymer, it fails to teach that the impregnation is 20 to 50wt% with reference to the starting weight of the nonwoven fabric. For example, in the Example 3 of the GROTEN reference 16% is used.

Application/Control Number: 10/089,911

Page 6

Art Unit: 1771

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 703-306-5714. The examiner can normally be reached on Monday-Thursday 8:00-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Norca L. Torres

December 15, 2003